

§ 34.14

(b)(1) The hearing official conducts any hearing as an informal proceeding.

(2) A witness in an oral hearing must testify under oath or affirmation.

(3) The hearing official maintains a summary record of any hearing.

(c) Before the hearing official considers evidence we obtain that was not included in the debt records available for inspection when we sent notice of proposed garnishment, we notify you that additional evidence has become available, may be considered by the hearing official, and is available for inspection or copying.

(d) The hearing official considers any objection you raise and evidence you submit—

(1) In or with the request for a hearing;

(2) During an oral hearing;

(3) By the date that we consider, under §34.9(e), that a request for an oral hearing has been withdrawn; or

(4) Within a period we set, ordinarily not to exceed seven business days, after—

(i) We provide you access to our records regarding the debt, if you requested access to records within 20 days after the date of the notice under §34.4;

(ii) We notify you that we have obtained and intend to consider additional evidence;

(iii) You request an extension of time in order to submit specific relevant evidence that you identify to us in the request; or

(iv) We notify you that we deny your request for an oral hearing.

(Authority: 31 U.S.C. 3720D)

§34.14 Burden of proof.

(a)(1) We have the burden of proving the existence and amount of a debt.

(2) We meet this burden by including in the record and making available to the debtor on request records that show that—

(i) The debt exists in the amount stated in the garnishment notice; and

(ii) The debt is currently delinquent.

(b) If you dispute the existence or amount of the debt, you must prove by a preponderance of the credible evidence that—

(1) No debt exists;

34 CFR Subtitle A (7–1–10 Edition)

(2) The amount we claim to be owed on the debt is incorrect, or

(3) You are not delinquent with respect to the debt.

(c)(1) If you object that the proposed garnishment rate would cause financial hardship, you bear the burden of proving by a preponderance of the credible evidence that withholding the amount of wages proposed in the notice would leave you unable to meet the basic living expenses of you and your dependents.

(2) The standards for proving financial hardship are those in §34.24.

(d)(1) If you object on the ground that applicable law bars us from collecting the debt by garnishment at this time, you bear the burden of proving the facts that would establish that claim.

(2) Examples of applicable law that may prevent collection by garnishment include the automatic stay in bankruptcy (11 U.S.C. 362(a)), and the preclusion of garnishment action against a debtor who was involuntarily separated from employment and has been reemployed for less than a continuous period of 12 months (31 U.S.C. 3720D(b)(6)).

(e) The fact that applicable law may limit the amount that an employer may withhold from your pay to less than the amount or rate we state in the garnishment order does not bar us from issuing the order.

(Authority: 31 U.S.C. 3720D)

§34.15 Consequences of failure to appear for an oral hearing.

(a) If you do not appear for an in-person hearing you requested, or you do not answer a telephone call convening a telephone hearing, at the time set for the hearing, we consider you to have withdrawn your request for an oral hearing.

(b) If you do not appear for an oral hearing but you demonstrate that there was good cause for not appearing, we may reschedule the oral hearing.

(c) If you do not appear for an oral hearing you requested and we do not reschedule the hearing, we provide a paper hearing to review your objections, based on the evidence in your